

LMSB Internal Management Document Publication Guide

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I. Introduction

The term “Internal Management Documents” or IMDs represents the official communications that designate authorities and disseminate to officials and employees the policies, information, instructions, guidelines and procedures necessary to do their jobs. Examples of IMDs that are used Servicewide are the Internal Revenue Manual, or IRM, Delegation Orders, Policy Statements, and Commissioner memoranda.

In addition, there are other types of IMDs used by LMSB to communicate information needed to conduct business. Such documents include LMSB Industry Director Directives, Audit Technique Guides, Industry Overview Guides, LMSB Commissioner Memoranda, LMSB Delegation Orders, issue alerts, position papers, job aids and others as shown in the attached Exhibit 1, LMSB Documents Table.

Many of these documents are electronically distributed internally and externally via email and web sites and are legally required to be made available to the public. LMSB Intranet web sites are used to disseminate information to IRS employees and to serve as a communication tool for field employees to interact with technical advisors and other specialists. Internet sites have also been established for LMSB documents on IRS.gov for the public. The focus of this guide will be on the creation, review, publication and maintenance of these IMDs (other than IRMs, Delegation Orders, and Policy Statements) in the electronic environment that is so much a part of today’s workplace. This document will supplement IMD procedures contained in IRM 1.11.1.

II. Legal Requirements of LMSB IMDs

The following is a brief summary of the key legislation that affects how LMSB creates, distributes and maintains IMDs.

A. Electronic Freedom of Information Act Amendments of 1996 (EFOIA) and FOIA Exemptions

EFOIA requires certain IRS records or documents be made available to the public electronically, when practical to do so, as follows:

- Those statements of policy and interpretations which have been adopted by the IRS and are not published in the Federal Register.
- Administrative staff manuals and instructions to staff that affect a member of the public.

- Copies of records previously released under FOIA, which the IRS determines may become, or are likely to become, the subject of future requests for substantially the same records.

In order to make determinations as to whether a particular category of documents falls within the requirements of EFOIA, it is important to focus on the purpose, intent, and content of the document. The focus should emphasize evaluating not only the intention behind the document at the time of its inception, but also considering how the document will come to be viewed and used by the agency over a period of time.

Even if the document is of a type required to be made available to the public, if its content falls within one or more of the FOIA's exemptions, set forth at 5 U.S.C. 552(b), then the document (or its exempt portions) need not be made available to the public. Three FOIA exemptions that may apply include: (1) exemption (b)(3) for 6103 (taxpayer) information and for 6105 documents subject to disclosure provisions governed by tax treaties; (2) exemption (b)(7)(E) for techniques and procedures used in law enforcement investigations, which are unknown by the public, or law enforcement guidelines if their disclosure could reasonably be expected to risk circumvention of the law; and (3) exemption (b)(5) for pre-decisional deliberative documents.

B. Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Congressional Review)

IRS documents that are determined to be "rules" under SBREFA (Public Law 104-121) are to be issued upon IRS approval and delivery to GAO/Congress. A "rule" (Public Law 104-121) is defined as an agency action that constitutes a statement of general or particular applicability and future effect designed to implement, interpret or prescribe law or policy. The focus of the Act was to require congressional review of agency actions that substantially affect the rights or obligations of outside parties.

Many documents issued under the Commissioner's authority to administer and enforce the Internal Revenue Code (Treasury Order No. 150-10) qualify as rules. The authority is redelegated to the Division Commissioners/Directors under Delegation Order 193. The types of "rules" subject to the SBREFA do not include "rules" that are specific to a particular taxpayer, but instead address procedures for taxpayers in a common industry or with common issues.

C. Federal Records Act of 1950

The Federal Records Act of 1950, as amended, and subsequent laws require that agency records be properly stored and preserved, available for retrieval, and subject to appropriate approved disposition schedules. Record creation is also within the subject matter of the Federal Records Act. The term record includes all books, papers maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics. Records disposition schedules relevant to LMSB documents are contained in IRM 1.15.23, Records Control Schedule for Tax Administration – Examination, and in IRM 1.15.26 Records Control Schedule for Tax Administration - International.

D. Section 508 of the Rehabilitation Act of 1973

Section 508 of the Rehabilitation Act of 1973 requires web pages and documents to be accessible to people with disabilities. In compliance with this Act, the Service issued Content and Usability Standards to be followed for all Internet and Intranet sites. See <http://irap.no.irs.gov/?x2> for information on making web documents compliant with Section 508.

III. LMSB IMD Creation

A. Numbering

IMDs other than IRMs, Policy Statements and Delegation Orders that will either 1) be incorporated into the IRM or 2) are subject to EFOIA or Congressional Review will have a control number assigned. This control number will help ensure interim guidance will be included in the IRM within one year, made available to the public upon issuance, and keep track of documents posted on the internet/intranet. Authors should contact the LMSB IMD Coordinator for a control number before final approval of the document. The numbering convention follows the one specified in IRM 1.11.1.8 paragraph (6).

The components of the control number are:

Component	Example
Division/Function	LMSB
The IR Part Number (Business Process Number:	Usually 04 for Examining Process (Business Process Numbers are found in IRM 1.11.1.3.3)
Month and Year	April 2006 would be 0406
Sequential Tracking Number	Starting with 001

The LMSB Control Number using the information above would be:
LMSB-04-0406-001

B. Content

Prior to creating a document, authors should consider the following:

- What is the purpose of the document?
- Who is the intended audience?
- How will the document be used?
- What kind of information will the document contain?
- Does this information belong in the IRM?

Answers to these questions will determine if a document is subject to EFOIA or Congressional Review.

C. Documents Generally Not Subject to EFOIA or Congressional Review

1. Informational - Restatements of Existing Tax Law

- a) Documents restating existing law or procedures are not instructions to staff for the purposes of EFOIA or SBREFA if no new instructions or legal positions are included; and as such, are generally not required to be published on the Electronic Reading Room (ERR) of IRS.gov.
- b) However if the document becomes subject to more than four FOIA requests, it will be required to be posted to IRS.gov .
- c) These documents are official agency records and must be properly stored and made available for retrieval as required by the Federal Records Act.
- d) Documents in this category include newsletters, training material, job aids and Q&As that summarize existing tax law or restate directives.
- e) These documents must contain the following components:
 - Date
 - Issuing Office /Author and contact information.
 - Type/Title of document – e.g., Training #, News Letter #, Summary of AJCA Provision XXX

f) The Document Publication Checksheet (Exhibit 2) should be completed. The Document Publication Checksheet is used to provide an “audit trail” for those documents that will be posted on IRS.gov or the LMSB Intranet.

2. Issue Resolution – Pre-decisional Deliberative Documents

- a) These documents are generally not required to be posted to the Electronic Reading Room (ERR) on IRS.gov or made available to the public (FOIA (b)(5) Exemption – Deliberative Process Privilege). This would include documents issued to gather information and comments on potential tax issues and new proposed tax law positions.
- b) Documents in this category include:
 1. Emerging Issue Alert Memorandum – Issued by LMSB Directors to obtain information to develop tax position or other administrative guidance (includes summary of issue - no tax law position)
 2. Proposed Coordinated Issue Paper – Released for the purpose of requesting comments on new tax positions.
 3. Also see Exhibit 1, LMSB Documents Table for further examples.
- c) These documents must contain the following:
 - Issue date and expiration (or comment period). This period could be extended.
 - Issuing office/Author
 - All documents containing proposed tax law position should also contain the following:
 - Labeled either “proposed” or “draft.”
 - Contain the following disclaimer: “This issue paper is not an official pronouncement of the law or the position of the Service and cannot be used, cited or relied upon as such.”
- d) The Document Publication Checksheet (Exhibit 2) should be completed.

3. Instructions to Staff Not Affecting Taxpayers

- a) Generally, memoranda issued by LMSB Directors or LMSB Commissioner not affecting taxpayers would not be subject to SBREFA and generally not be subject to EFOIA. For example, instructions for timekeeping, travel, personnel and computer systems

would generally not affect taxpayers. See Exhibit 1, LMSB Documents Table.

b) These documents would not require posting to IRS.gov, but should be posted to the LMSB Intranet on either the LMSB main website or on an LMSB Industry sub-website as appropriate.

c) If the instructions to staff will be included in IRM (even if not affecting taxpayers) a control number will be needed. Interim guidance that will be included in the IRM will be posted to the Electronic Reading Room on IRS.gov.

Insert in the upper right-hand side of the front page:

- LMSB Control Number
- Affected IRM
- Include document title/subject
- Include contact information (on separate transmittal memo, if preferred – see Exhibit 8 for a memo template)

d) The Document Publication Checksheet (Exhibit 2) should be completed for postings to the main LMSB website and for postings to IRS.gov.

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D. Documents Generally Subject to EFOIA and Congressional Review: Instructions to Staff Affecting Taxpayers

1. Generally, documents developed to be issued by LMSB Directors or LMSB Commissioner mandating a tax position or other instructions to staff affecting taxpayers are subject to SBREFA and EFOIA and are required to be posted to the ERR on IRS.gov. If the document is posted to IRS.gov, any reference to it on the LMSB Intranet should link to the IRS.gov posting. LMSB Content Publishers will not republish the document on the LMSB Intranet.
2. Documents in this category include Coordinated Issue Papers, LMSB Directives, Audit Techniques Guides and Industry Overview Guides. See Exhibit 4, Audit Techniques Guide Checksheet for further guidance on preparation and issuance of Audit Techniques Guides. Also see Exhibit 1, LMSB Documents Table.
3. The IMD must contain the following:

a) Insert in upper right hand side of the front page:

- LMSB Control Number (leave number blank until document is ready for finalizing)
- Affected IRM (IRM 4.51.2, *LMSB Administrative Guidance* and any other IRM/Handbook affected)

b) Insert Document Title at the top of document

c) Add Disclaimer: “This document is not an official pronouncement of the law or the position of the Service and cannot be used, or cited or relied upon as such.” at the bottom of the first page.

4. A transmittal memorandum should be drafted for signature of the issuing official for purposes of transmitting the guidance and providing contact information. Contact persons should be listed on the transmittal, memo rather than on the document itself. See Exhibit 8 for a sample transmittal memo. Since the transmittal memorandum itself does not contain instructions to staff impacting taxpayers, the memorandum is not required to be posted to IRS.gov. Note: Contact information that is stated in the document cannot be redacted.

5. A concise general statement should be prepared briefly summarizing the document. This statement is needed for SBREFA purposes and the Content Publishing Request form (described below).

6. The Document Publication Checksheet (Exhibit 2) should be initiated and filled out to the extent possible by the Author.

7. The Author should also complete the Content Publishing Request (CPR) Form (Exhibit 6). The CPR Form is required to accompany all files that are posted on IRS.gov.

E. IMDs Containing Sensitive But Unclassified (SBU) Information (formerly OUO)

1. Authors of internal management documents meeting the Freedom of Information Act (FOIA) criteria under IRM 1.11.1.9.1, *E-FOIA Criteria* must ensure all Official Use Only (OUO) content is properly designated and marked in accordance with the following procedures. See IRM 11.3.12.4, Disclosure of Official Information, *Guidelines for Classification*.

2. In the case where the content is predominantly OUO and a redacted version of the memorandum would not be meaningful, the memorandum is exempt from posting to the FOIA Electronic Reading Room on IRS.gov.

3. Designating OUO Content

- a) Evaluate text word by word to determine what content is OUO.
- b) Input a pound sign symbol (#) before and after any text containing OUO information. The marking identifies the OUO content for internal users and delineates the text to be redacted in the public version.
- c) For any line containing OUO content input the # symbol to the right of the line.
- d) Insert a "footer" with the designation, *"Any line marked with a # is for Official Use Only."* All pages in the document must include this footer.
- e) Follow IRM 1.11.1.8, Interim Guidance for format requirements.

4. Clearance

- a) Content designated as OUO must be approved via Form 2061, Document Clearance Record by an official with OUO classification authority under Delegation Order 89.
- b) Submit a Form 2061 to all impacted functions, including the Office of Disclosure.
- c) Submit a completed Form 13709, Disclosure Checklist for IMD and Training Materials to the Office of Disclosure.

5. Distribution and Posting

- a) After review and clearance, distribute the memorandum to affected employees.
- b) **Note:** Ensure the Intranet site where the memorandum is being posted is approved and designated to host "Official Use Only" information. See interim IRM 10.8.1, Information Technology Security Policy and Guidance.

F. LMSB Area/Division Counsel Coordination

1. Technical Coordination

All documents containing legal discussion should be coordinated with and reviewed for substantive accuracy by the assigned Area/Division Counsel (LMSB). Assigned Counsel should advise the author on whether a document needs to be reviewed by National Office Chief Counsel. Note: Early involvement by National Office is strongly

recommended for those documents requiring Chief Counsel technical review.

2. Disclosure Issue Coordination

Questions involving E-FOIA, Congressional Review, OOU, and other disclosure matters should be raised with assigned Area/Division Counsel (LMSB) at the same time as technical coordination on substantive issues. (Technical Advisors, for example, should consult their assigned Industry Counsel.) If necessary, assigned Counsel will coordinate the issue with the Disclosure Technical Advisor responsible for LMSB national policy matters. Any document containing OOU information must be cleared by Disclosure. Authors and IMD Coordinators may also consult with the Disclosure Technical Advisor for LMSB. The Disclosure Technical Advisor will coordinate the issue with the Office of the Assistant Chief Counsel (Disclosure and Privacy Law), if necessary.

IV. File Format Requirements: LMSB Intranet and IRS.gov

A. LMSB Intranet

The author should submit the document in Word, Adobe PDF, PowerPoint, or Excel. Generally, the LMSB Content Publisher will then convert the document for Intranet publication into a webpage format, using an LMSB standardized template. Thus, the Word, Adobe PDF, PowerPoint, or Excel formats will **not** be retained. The exceptions to this general rule are:

- Word documents may **only** be published to the LMSB Intranet if the file is designed to be downloaded and modified or distributed by the user, such as a pro-forma workpaper for Revenue Agent use.
- Adobe PDF may **only** be published to the LMSB Intranet if the document is an official form.
- PowerPoint files may **only** be published to the LMSB Intranet if the file is designed to be downloaded and used as a PowerPoint presentation. If you choose to retain the PowerPoint format, the LMSB Content Publisher will also have to publish a text only alternative containing the information presented in the PowerPoint file.
- Excel spreadsheets may **only** be published to the LMSB Intranet if they contain computations (formulas for mathematical equations), and are intended for downloading and use as a spreadsheet.

B. IRS.gov

The author should submit the document in Word, Adobe PDF, PowerPoint, or Excel. Generally, the LMSB webmaster will then convert the document for IRS.gov publication into a webpage format, using an IRS standardized template. Thus, the Word, Adobe PDF, PowerPoint, or Excel formats will **not** be retained. There are no exceptions to this general rule for publication to IRS.gov.

V. Managerial Review & Approval of IMDs

- A. All documents that will be distributed via the Intranet or IRS.gov must first be reviewed by the author's manager. The author will email the document along with the Document Publication Checksheet (See Exhibit 2) and CPR form (Exhibit 6) to his/her manager for review.
- B. The author's manager must review each document before approving for posting. The review will consist of checking for:
 1. OUO/SBU information (e.g. taxpayer or personally identifiable information)
 2. Copyright violations.
 3. Technical content
 4. Clarity and tone
 5. EFOIA designation
 6. Congressional Review designation
 7. Proper numbering
 8. Coordination with assigned Area/Division Counsel (LMSB).
- C. For documents restating existing law or procedures, the manager will email the document and Document Publication Checksheet to his/her assigned LMSB Content Publisher for posting to the Intranet.
- D. Routing and clearance required by pre-decisional deliberative documents will be determined on case by case basis. Generally, they will be sent to the responsible director or designee for approval before being posted to the Intranet. See IRM 4.51.2. Clearance through other divisions or operating units may be necessary for joint projects. Once approved, the manager will email the document and Document Publication Checksheet to his/her assigned LMSB Content Publisher for posting to the Intranet.
- E. Proposed Coordinated Issue Papers ready for Chief Counsel review will be sent to Pre-filing and Technical Services (PFTS) for coordination and clearance. These documents will be controlled through the PFTS Coordinated Issue Program Manager. See IRM 4.51.2.4 for detailed procedures for clearing and issuing coordinated issue papers.

- F. See section VI below for routing and clearing of all other LMSB IMDs.
- G. Documents not previously required to be posted to IRS.gov, but that became subject to EFOIA because they were frequently requested and released under FOIA, will be cleared following the procedures in Section VI below. The Disclosure Office has a national inventory system called E-DIMS (Electronic –Disclosure Information Management System) that tracks FOIA requests. Disclosure will monitor E-DIMS to determine if a document needs to be placed on IRS.gov due to multiple requests.

VI. Routing and Clearance of LMSB IMDs

- A. LMSB IMDs ready for clearance will be emailed to the responsible Industry/Function IMD Coordinator in accordance with the flowchart in Exhibit 3 with the following items:
- Document file(s)
 - Transmittal memorandum with name and telephone number of contact(s)/author
 - Concise general statement summarizing the document (if applicable)
 - Document Publication Checksheet
 - List of offices that need to review document. Note: If the document was previously coordinated with another office, include the name and office of the person involved.
- B. The Industry/Function IMD Coordinator (Exhibit 7) is responsible for clearance of procedural guidance as follows:
1. Industry/Function IMD coordinator reviews documents to ensure they have been properly prepared.
 2. Industry/Function IMD coordinator prepares Form 2061, Document Clearance Record, for clearance through affected offices according to the originator's instructions. Note: Directives affecting bargaining unit employees must be reviewed by Labor Relations, procedures that interpret or supplement an IRS policy statement must be reviewed by Chief Counsel, and Directives affecting taxpayer rights must be reviewed by the Taxpayer Advocate. See Exhibit 9 for a list of contacts.
 3. Industry/Function IMD Coordinator emails Form 2061 and document to reviewers. The clearance review period depends on the type and the size of the document, and the urgency for issuance. For LMSB Directives, 15 days is provided for clearance in IRM 4.51.2. Generally, 30 days should be given for large documents.

4. Industry/Function IMD Coordinator sends comments back to the author to have them considered and incorporated (as needed).
5. Author addresses comments, makes necessary edits, removes the word “draft” from the document, obtains the LMSB Control Number from the LMSB IMD Coordinator and inserts control number on the guidance document and transmittal memo. The author sends the guidance document and the memo to the Industry/Function IMD Coordinator.
6. Industry/Function IMD Coordinator reviews the document to ensure that all necessary changes have been made. If not, determine if the document should be re-cleared through reviewer(s).
7. Once document is deemed to be finalized, the Industry/Function IMD Coordinator obtains the responsible Director’s approval on the Document Clearance, and the Transmittal Memorandum.
8. Industry/Function IMD Coordinator finishes the remainder of the Document Publication Checksheet and records date of approval by the Director.
9. See Section VII for special instructions for documents subject to SBREFA and/or EFOIA.

VII. Issuance of Instructions to Staff Affecting Taxpayers

A. Congressional Review (SBREFA) Compliance – Delivery to Congress

1. Industry/Function IMD coordinator will prepare the Congressional Review Act (CRA) Form (Exhibit 5). A copy of the form is available at <http://www.gao.gov/decisions/majrule/submit.htm> See Exhibit 32.2.8-4 of IRM 32.2.8 for instructions for completing the form. (Follow CIP/MSSP procedures).
2. Industry/Function IMD Coordinator emails the Document Publication Checksheet, the CPR Form, and the package for Congressional review consisting of the document, the concise general statement, and the completed CRA forms to the PQA IMD Congressional Review Coordinator.
3. PQA IMD Congressional Review Coordinator dates CRA forms and document, prints and assembles the Congressional Review package and delivers it to Chief Counsel Regulations Unit.

4. PQA Congressional Review Coordinator will complete Document Publication Checksheet to record date package submitted for Congressional review.
5. PQA Congressional Review Coordinator notifies the Industry/Function IMD Coordinator of delivery.
6. The document is input into the PQA Document Inventory System.

B. EFOIA Compliance

1. For documents subject to EFOIA and SBREFA, the PQA Congressional Review Coordinator, after submission for Congressional review, will send the document, transmittal memorandum (if applicable), Document Publication Checksheet, and CPR Form to the LMSB webmaster for posting to IRS.gov.
2. For documents subject to EFOIA, but not SBREFA, the Industry/Function IMD Coordinator will send the document, transmittal memorandum (if applicable), Document Publication Checksheet, and CPR Form to the LMSB webmaster for posting to IRS.gov.
3. A copy of the Document Publication Checksheet is sent to the LMSB IMD Coordinator for recordkeeping purposes. The document will be tracked in the PQA Document Inventory System.

C. Internal Issuance and Communications

1. After posting to IRS.gov, the LMSB webmaster (industry/function webmaster) will notify the author and the assigned Content Publisher of the document's IRS.gov URL, so a link to the document can be established on the LMSB Intranet.
2. Author will send to LMSB Communications a news item to communicate issuance.

VIII. Issuance of Instructions to Staff Not Impacting Taxpayers

- A. If the IMD does not affect taxpayers and persons outside the agency, the Industry/Function IMD coordinator will send the document, transmittal memorandum (if applicable), and Document Publication Checksheet to the assigned LMSB Content Publisher for posting to the intranet web site.
- B. Author will send to LMSB Communications a news item to communicate issuance.

Note: The instructions in Sections VII and VIII do not eliminate the need for distributing the document through normal channels.

IX. Maintenance of LMSB Intranet Site and IRS.gov and Records Retention

- A. Each LMSB office is responsible for maintaining its own subweb within the LMSB Intranet site and managing its content on IRS.gov. This includes deleting obsolete material; updating web content to reflect changes in law, accounting or auditing standards as well as changes in taxpayer/industry practices, adding new material, etc. Procedural memoranda are to be incorporated into the IRM.

Exhibits:

1. LMSB Documents Table
2. Document Publication Checksheet
3. IMD Author's Flowchart
4. Audit Technique Guide Checksheet
5. Congressional Review Form
6. Content Publishing Request (CPR) Form
7. List of Industry/Function IMD Coordinators
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